



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2010 REGULAR SESSION

HOUSE BILL NO. 564

AS ENACTED

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Allen

AN ACT relating to the justice system and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 31.015 is amended to read as follows:

(1) (a) The Public Advocacy Commission shall consist of the following members, none of whom shall be a prosecutor, law enforcement official, or judge, who shall serve terms of four (4) years, except the initial terms shall be established as hereafter provided:

1. Two (2) members appointed by the Governor;

2. One (1) member appointed by the Governor. This member shall be a child advocate or a person with substantial experience in the representation of children;

~~3. One (1) member who is the executive director of the Office of Legislative and Intergovernmental Services of the Justice and Public Safety Cabinet;~~

~~4. Two (2) members appointed by the Kentucky Supreme Court;~~

4. Three (3)~~5. Two (2)~~ members, who are licensed to practice law in Kentucky and have substantial experience in the representation of persons accused of crime, appointed by the Governor from a list of three (3) persons submitted to him or her for each individual vacancy by the board of governors of the Kentucky Bar Association;

5.6.~~6.~~ The dean, ex officio, of each of the law schools in Kentucky or his or her designee; and

6.7.~~7.~~ One (1) member appointed by the Governor from a list of three (3) persons submitted to him or her by the joint advisory boards of the Protection and Advocacy Division of the Department for Public Advocacy.

(b) Any member of the commission serving prior to July 15, 2002, shall serve

1 until the expiration of his or her current term of office. Subsequent
2 appointments shall be for a term of four (4) years from the date of expiration
3 of the term for which his or her predecessor was appointed.

4 (2) At the first meeting of the commission, a drawing by lot shall be conducted to
5 determine the length of each original member's term. Initially there shall be four (4)
6 two (2) year terms, four (4) three (3) year terms, and four (4) four (4) year terms.
7 Vacancies in the membership of the commission shall be filled in the same manner
8 as original appointments. Appointments to fill vacancies occurring before the
9 expiration of a term shall be for the remainder of the unexpired term.

10 (3) The commission shall first meet at the call of the Governor and thereafter as the
11 commission shall determine on a regular basis, but at least quarterly, and shall be
12 presided over by a chairperson elected by its members for a one (1) year term. A
13 majority of commission members shall constitute a quorum, and decisions shall
14 require the majority vote of those present; except that a recommendation to the
15 Governor pertaining to the appointment, renewal of the appointment, or removal of
16 the public advocate shall require a majority vote of the commission. Each member
17 of the commission shall have one (1) vote, and voting by proxy shall be prohibited.

18 (4) The public advocate shall, upon appointment or renewal, be an ex officio member
19 of the commission without the power to vote, shall serve as secretary of the
20 commission, and shall be entitled to attend and participate in all meetings of the
21 commission except discussions relating to renewal of his or her term or his or her
22 removal.

23 (5) Commission members shall be reimbursed for reasonable and necessary expenses
24 incurred while engaged in carrying out the duties of the commission and shall
25 receive one hundred dollars (\$100) per day for each meeting attended unless
26 prohibited by law from receiving such compensation.

27 (6) The commission shall:

- 1 (a) Receive applications, interview, and recommend to the Governor three (3)
- 2 attorneys as nominees for appointment as the public advocate;
- 3 (b) Assist the public advocate in drawing up procedures for the selection of his or
- 4 her staff;
- 5 (c) Review the performance of the public advocacy system and provide general
- 6 supervision of the public advocate;
- 7 (d) Assist the Department for Public Advocacy in ensuring its independence
- 8 through public education regarding the purposes of the public advocacy
- 9 system; and
- 10 (e) Review and adopt an annual budget prepared by the public advocate for the
- 11 system and provide support for budgetary requests to the General Assembly.
- 12 (7) In no event shall the commission or its members interfere with the discretion,
- 13 judgment, or advocacy of employees of the Department for Public Advocacy in
- 14 their handling of individual cases.

15 ➔Section 2. KRS 196.180 is amended to read as follows:

- 16 (1) The warden shall have the general management of the institution, and the inmates
- 17 thereof, subject to the administrative regulations of the Department of Corrections,
- 18 and he or she shall devote his or her entire time to the duties of his or her office.
- 19 (2) The warden of each institution shall be held responsible for the management of his
- 20 or her institution and shall be subject to removal at any time by the commissioner.
- 21 **(3) The warden of each Department of Corrections institution shall expunge inmate**
- 22 **prison disciplinary reports that have been dismissed or otherwise ordered void,**
- 23 **and shall further remove any reference to dismissed or voided disciplinary reports**
- 24 **from inmate records.**

25 ➔Section 3. KRS 197.045 is amended to read as follows:

- 26 (1) Any person convicted and sentenced to a state penal institution may receive a credit
- 27 on his sentence of not exceeding ten (10) days for each month served, except as

otherwise provided in this section, to be determined by the department from the conduct of the prisoner. In addition, the department shall provide an educational good time credit of ninety (90)~~[sixty (60)]~~ days to any prisoner who successfully receives a general~~[graduate]~~ equivalency diploma or a high school diploma, a two (2) or four (4) year college degree,~~[or]~~ a two (2) year or four (4) year certification in applied sciences,~~[or who receives]~~ a technical education diploma as provided and defined by the department, or who completes a drug treatment program or other program as defined by the department that requires participation in the program for a minimum of six (6) months; prisoners may earn additional credit for each program completed. The department may forfeit any good time previously earned by the prisoner or deny the prisoner the right to earn good time in any amount if during the term of imprisonment, a prisoner commits any offense or violates the rules of the institution.

(2) When two (2) or more consecutive sentences are to be served, the several sentences shall be merged and served in the aggregate for the purposes of the good time credit computation or in computing dates of expiration of sentence.

(3) An inmate may, at the discretion of the commissioner, be allowed a deduction from a sentence not to exceed seven (7)~~[five (5)]~~ days per month for performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations and programs, and may be allowed an additional seven (7) days per month served for acts of exceptional service during times of emergency. The allowance shall be an addition to commutation of time for good conduct and under the same terms and conditions and without regard to length of sentence.

(4) Until successful completion of the sex offender treatment program, an eligible sexual offender may earn good time. However, the good time shall not be credited to the eligible sexual offender's sentence. Upon the successful completion of the sex

1 offender treatment program, as determined by the program director, the offender
 2 shall be eligible for all good time earned but not otherwise forfeited under
 3 administrative regulations promulgated by the Department of Corrections. After
 4 successful completion of the sex offender treatment program, an eligible sexual
 5 offender may continue to earn good time in the manner provided by administrative
 6 regulations promulgated by the Department of Corrections. Any eligible sexual
 7 offender, as defined in KRS 197.410, who has not successfully completed the sex
 8 offender treatment program as determined by the program director shall not be
 9 entitled to the benefit of any credit on his or her sentence. A sexual offender who
 10 does not complete the sex offender treatment program for any reason shall serve his
 11 or her entire sentence without benefit of good time, parole, or other form of early
 12 release. The provisions of this section shall not apply to any sexual offender
 13 convicted before July 15, 1998, or to any mentally retarded sexual offender.

- 14 (5) (a) The Department of Corrections shall, by administrative regulation, specify the
 15 length of forfeiture of good time and the ability to earn good time in the future
 16 for those inmates who have civil actions dismissed because the court found
 17 the action to be malicious, harassing, or factually frivolous.
- 18 (b) Penalties set by administrative regulation pursuant to this subsection shall be
 19 as uniform as practicable throughout all institutions operated by, under
 20 contract to, or under the control of the department and shall specify a specific
 21 number of days or months of good time forfeited as well as any prohibition
 22 imposed on the future earning of good time.

23 ➔Section 4. KRS 439.320 is repealed, reenacted, and amended to read as follows:

- 24 (1) The Governor shall appoint a Parole Board consisting of nine (9) full-time
 25 members~~[and two (2) part time members, as described in subsection (7) of this~~
 26 ~~section,]~~ to be confirmed by the Senate in accordance with KRS 11.160.~~[Each of~~
 27 ~~the two (2) part time members shall be from a different political party.]~~ The

Governor shall make each appointment~~[for full time and part time members]~~ from a list of three (3) names given to him or her by the Kentucky State Corrections Commission. Each member appointed to the board shall have had at least five (5) years of actual experience in the field of penology, correction work, law enforcement, sociology, law, education, social work, medicine, or a combination thereof, or have served at least five (5) years previously on the Parole Board. No more than six (6) board members shall be of the same political party. The board shall be attached to the Justice and Public Safety Cabinet for administrative purposes only. The Department of Corrections shall provide any clerical, stenographic, administrative, and expert staff assistance the board deems necessary to carry out its duties.

(2) The Governor shall designate~~[name]~~ one (1)~~[full time]~~ member as chairperson~~[chairman]~~ of the board. The member designated as chairperson shall serve in that capacity at the pleasure of the Governor or until his or her term expires.

(3) The~~[full time]~~ members of the board shall give full time to the duties of their office and shall receive necessary traveling expenses and a salary to be determined pursuant to KRS 64.640(2), except the chairperson~~[chairman]~~ of the board shall receive additional compensation of one thousand dollars (\$1,000) per year for his or her services. Their terms of office shall be four (4) years and until their successors are appointed and have qualified. Their successors shall be appointed thereafter as provided in this section for terms of four (4) years, and a vacancy occurring before expiration of the term of office shall be similarly filled for the unexpired term.~~[The chairman of the board shall serve as such until the expiration of his or her term at which time the Governor shall name his or her successor and designate the chairman of the board. If a vacancy occurs in the chairmanship of the board before the expiration of the term, the Governor may name a successor to serve for the~~

1 ~~remainder of the unexpired term.]~~

2 (4) The organization of the board shall be determined by the chairperson~~[chairman]~~
3 and shall be consistent with administrative regulations promulgated pursuant to
4 KRS 439.340. For policy and procedural matters, five (5) members shall constitute
5 a quorum. Parole and final parole revocation hearings may be done by panels of the
6 board, subject to the following requirements:

7 (a) If a two (2) member panel is utilized, both members of the panel shall agree
8 on the decision or the matter shall be referred to the full board;

9 (b) If a three (3) member panel is utilized, two (2) of the three (3) members of the
10 panel shall agree on a decision or the matter shall be referred to the full board;
11 and

12 (c) If a panel of four (4) or more members is utilized, a majority of the panel shall
13 agree on a decision or the matter shall be referred to the full board.

14 (5) The Governor may not remove any member of the board except for disability,
15 inefficiency, neglect of duty, or malfeasance in office. Before removal, he or she
16 shall give the member a written copy of the charges against him or her and shall fix
17 the time when he or she can be heard in his or her defense, which shall not be less
18 than ten (10) days thereafter. Upon removal, the Governor shall file in the office of
19 the Secretary of State a complete statement of all charges made against the member
20 and the findings thereupon with a record of the proceedings.

21 (6) Upon the expiration of the terms of office of the two (2) full-time board members
22 whose terms expire May 23, 1994, the Governor shall appoint two (2) full-time
23 members to serve terms which will expire June 30, 1995. Thereafter, appointments
24 to these two (2) full-time terms shall be for four (4) years and shall be filled as
25 provided for in subsection (3) of this section. The Governor may reappoint present
26 members if they meet the qualifications set forth in subsection (1) of this section.

27 (7) The part-time members of the board, whose terms have not expired upon the

1 effective date of this Act, shall serve until their terms expire and may participate in
 2 considering the grant or revocation of parole at the request of the
 3 chairperson~~[chairman]~~. No more than one (1) part-time Parole Board member shall
 4 serve on any panel of the board as set forth in subsection (4) of this section. The
 5 part-time Parole Board member called upon to serve shall be paid at a per diem rate
 6 equal to the per diem rate for the salary of a newly appointed full-time member and
 7 shall receive necessary travel expenses.~~[The part time Parole Board member shall~~
 8 ~~serve for a period of four (4) years from the date of appointment and may be~~
 9 ~~reappointed.]~~

10 (8) The Office of Executive Director of the Parole Board is created. The office shall be
 11 headed by an executive director who shall be appointed by and directly responsible
 12 to the secretary of the Justice and Public Safety Cabinet in matters relating to
 13 administration. The executive director shall be responsible for the support services
 14 to the Parole Board in the area of financial, personnel, and facilities management;
 15 shall provide recommendations on administrative issues affecting the board to the
 16 secretary of the Justice and Public Safety Cabinet, the chairperson~~[chairman]~~ of the
 17 Parole Board, and Parole Board members; shall review and draft legislation and
 18 promulgate administrative regulations for the board; and shall review parole data
 19 and conduct long-range planning as relevant to the planning needs of the board.

20 ➔Section 5. KRS 439.340 is repealed and reenacted to read as follows:

21 (1) The board may release on parole persons confined in any adult state penal or
 22 correctional institution of Kentucky or sentenced felons incarcerated in county jails
 23 eligible for parole. All paroles shall issue upon order of the board duly adopted. As
 24 soon as practicable after his or her admission to an adult state penal or correctional
 25 institution or county jail if he or she is a sentenced felon, and at such intervals
 26 thereafter as it may determine, the Department of Corrections shall obtain all
 27 pertinent information regarding each prisoner, except those not eligible for parole.

1 The information shall include his or her criminal record, his or her conduct,
2 employment, and attitude in prison, and the reports of physical and mental
3 examinations that have been made. The Department of Corrections shall furnish the
4 circumstances of his or her offense and his or her previous social history to the
5 institution and the board. The Department of Corrections shall prepare a report on
6 any information it obtains. It shall be the duty of the Department of Corrections to
7 supplement this report with any material the board may request and submit the
8 report to the board.

- 9 (2) Before granting the parole of any prisoner, the board shall consider the pertinent
10 information regarding the prisoner and shall have him or her appear before it for
11 interview and hearing. The board in its discretion may hold interviews and hearings
12 for prisoners convicted of Class C felonies not included within the definition of
13 "violent offender" in KRS 439.3401 and Class D felonies. The board in its
14 discretion may request the parole board of another state confining prisoners
15 pursuant to KRS 196.610 to interview eligible prisoners and make a parole
16 recommendation to the board. A parole shall be ordered only for the best interest of
17 society and not as an award of clemency, and it shall not be considered a reduction
18 of sentence or pardon. A prisoner shall be placed on parole only when arrangements
19 have been made for his or her proper employment or for his or her maintenance and
20 care, and when the board believes he or she is able and willing to fulfill the
21 obligations of a law abiding citizen. Notwithstanding any statute to the contrary,
22 including KRS 440.330, when a prisoner is otherwise eligible for parole and the
23 board has recommended parole for that prisoner for the reasons set forth in this
24 subsection, the board may grant parole to any prisoner wanted as a fugitive by any
25 other jurisdiction, and the prisoner shall be released to the detainer from that
26 jurisdiction. Such parole shall not constitute a relinquishment of jurisdiction over
27 the prisoner, and the board in all cases expressly reserves the right to return the

1 prisoner to confinement in a correctional institution of the Commonwealth if the
2 prisoner violates the terms of his or her parole.

3 (3) (a) A nonviolent offender convicted of a Class D felony with an aggregate
4 sentence of one (1) to five (5) years who is confined to a state penal institution
5 or county jail shall have his or her case reviewed by the Parole Board after
6 serving fifteen percent (15%) or two (2) months of the original sentence,
7 whichever is longer.

8 (b) Except as provided in paragraph (a) of this subsection, the board shall adopt
9 administrative regulations with respect to the eligibility of prisoners for
10 parole, the conduct of parole and parole revocation hearings and all other
11 matters that come before it, or conditions to be imposed upon parolees.
12 Regulations governing the eligibility of prisoners for parole shall be in
13 accordance with professionally accepted ideas of correction and reform and
14 may utilize in part objective, performance-based criteria; however, nothing
15 herein contained shall preclude the board from utilizing its present regulations
16 in conjunction with other factors involved that would relate to the inmate's
17 needs and the safety of the public.

18 (4) The board shall insure that sentenced felons confined in county jails are considered
19 for parole within thirty (30) days of their parole eligibility date and the Department
20 of Corrections shall provide the necessary assistance and information to the board in
21 order for it to conduct timely parole reviews.

22 (5) In addition to or in conjunction with each hearing conducted under subsection (2) of
23 this section for any prisoner convicted of a Class A, B, or C felony and prior to the
24 granting of a parole to any such prisoner, the parole board shall conduct a hearing of
25 which the following persons shall receive not less than forty-five (45) nor more than
26 ninety (90) days' notice: the Commonwealth's attorney who shall notify the sheriff
27 of every county and the chief of police of every city and county in which the

1 prisoner committed any Class A, B, or C felony for which he or she is imprisoned,
2 and all identified victims of the crimes or the next of kin of any victim who is
3 deceased. Notice to the Commonwealth's attorney shall be by mail, fax, or
4 electronic means at the discretion of the board, and shall be in a manner that ensures
5 receipt at the Commonwealth attorney's business office. Notices received by chiefs
6 of police and sheriffs shall be posted in a conspicuous location where police
7 employed by the department may see it. Notices shall be posted in a manner and at a
8 time that will allow officers to make comment thereon to the Parole Board. Notice
9 to victims or their next of kin shall be made, for prisoners incarcerated prior to July
10 15, 1986, by mail, fax, or electronic means at the discretion of the board, and shall
11 be in a manner that ensures receipt by the Commonwealth's attorney, who shall
12 forward the notice promptly to the victims or their next of kin at their last known
13 address. For prisoners incarcerated on or after July 15, 1986, notice to the victims or
14 their next of kin shall be by mail from the Parole Board to their last known address
15 as provided by the Commonwealth's attorney to the Parole Board at the time of
16 incarceration of the prisoner. Notice to the victim or the next of kin of subsequent
17 considerations for parole after the initial consideration shall not be sent if the victim
18 or the next of kin gives notice to the board that he or she no longer wants to receive
19 such notices. The notice shall include the time, date, and place of the hearing
20 provided for in this subsection, and the name and address of a person to write if the
21 recipient of the notice desires to attend the hearing or to submit written comments.

22 (6) Persons receiving notice as provided for in subsection (5) of this section may
23 submit comments, in person or in writing, to the board upon all issues relating to the
24 parole of the prisoner. The board shall read and consider all comments prior to
25 making its parole decision, if they are received by the board not less than seven (7)
26 days before the date for the hearing. The board shall retain all comments in the
27 prisoner's permanent Parole Board file, and shall consider them in conjunction with

1 any subsequent parole decisions affecting the prisoner. In addition to officers listed
2 in subsection (5) of this section, the crime victims or the next of kin of any victim
3 who is deceased or who is disabled and cannot attend the hearing or the parent or
4 legal guardian of any victim who is a minor may attend the hearing provided for in
5 subsection (5) of this section and present oral and written comments upon all issues
6 relating to the parole of the prisoner, if they have advised the board, in writing
7 received by the board not less than seven (7) days prior to the date set for the
8 hearing, of their intention to attend the hearing. The board shall receive and
9 consider all comments, shall make a record of them which it shall retain in the
10 prisoner's permanent Parole Board file, and shall consider them in conjunction with
11 any subsequent parole decision affecting the prisoner. Persons appearing before the
12 Parole Board pursuant to this subsection may elect to make their presentations
13 outside of the presence of the prisoner.

14 (7) Victims of Class D felonies may submit comments in person or in writing to the
15 board upon all issues relating to the parole of a prisoner.

16 (8) Any hearing provided for in subsections (5), (6), and (7) of this section shall be
17 open to the public unless the persons having a right to appear before the board as
18 specified in those subsections request closure of hearing for reasons of personal
19 safety, in which event the hearing shall be closed. The time, date, and location of
20 closed hearings shall not be disclosed to the public.

21 (9) Except as specifically set forth in this section, nothing in this section shall be
22 deemed to expand or abridge any existing rights of persons to contact and
23 communicate with the Parole Board or any of its members, agents, or employees.

24 (10) The unintentional failure by the Parole Board, sheriff, chief of police, or any of its
25 members, agents, or employees or by a Commonwealth's attorney or any of his or
26 her agents or employees to comply with any of the provisions of subsections (5),
27 (6), and (8) of this section shall not affect the validity of any parole decision or give

1 rise to any right or cause of action by the crime victim, the prisoner, or any other
2 person.

3 (11) No eligible sexual offender within the meaning of KRS 197.400 to 197.440 shall be
4 granted parole unless he or she has successfully completed the Sexual Offender
5 Treatment Program.

6 (12) Any prisoner who is granted parole after completion of the Sexual Offender
7 Treatment Program shall be required, as a condition of his or her parole, to
8 participate in regular treatment in a mental health program approved or operated by
9 the Department of Corrections.

10 (13) When an order for parole is issued, it shall recite the conditions thereof.

11 ➔ Section 6. KRS 439.344 is amended to read as follows:

12 The period of time spent on parole shall count as a part of the prisoner's sentence, except
13 when a parolee is:

14 (1) Returned to prison as a parole violator for a new felony conviction;

15 (2) Returned to prison as a parole violator after charges have been filed or an
16 indictment has been returned for a felony offense committed while on parole and
17 the prisoner is subsequently convicted of that offense;

18 (3) Returned to prison as a parole violator and is subsequently convicted of a felony
19 offense committed while on parole;

20 (4) Returned to prison as a parole violator for absconding from parole supervision,
21 except that the time spent on parole prior to absconding shall count as part of the
22 prisoner's sentence;

23 (5) Returned to prison as a parole violator and it is subsequently determined that he
24 or she owes restitution pursuant to KRS 439.563 and has an arrearage on that
25 restitution. Any credit withheld pursuant to this subsection shall be reinstated
26 when the arrearage is paid in full;

27 (6) Classified as a violent offender pursuant to KRS 439.3401; or

1 ~~(7)~~~~(3)~~ A registered sex offender pursuant to KRS 17.500 to 17.580.

2 ➔Section 7. KRS 441.064 is amended to read as follows:

- 3 (1) The department shall employ the jail consultants, inspectors, and other employees
4 necessary to administer and enforce the provisions of KRS 441.055 to 441.075.
- 5 (2) The department shall inspect each jail biannually and may inspect jails more
6 frequently.
- 7 (3) The department shall be granted access at any reasonable time to any jail facility or
8 part of any jail facility and shall be granted access to all books, records, and data
9 pertaining to any jail which the department deems necessary for the administration
10 and enforcement of the provisions of KRS 441.055 to 441.075.
- 11 (4) Following an inspection of a jail, the department shall notify the jailer and the fiscal
12 court by certified or electronic mail of any deficiencies which are discovered and
13 documented. If the deficiencies are related to health or safety, the notification shall
14 be sent within ten (10) working days, excluding weekends and holidays. The
15 department shall submit an annual written report of the findings of its inspections
16 and the condition of the jail to the jailer and the fiscal court.

17 ➔Section 8. KRS 441.075 is amended to read as follows:

- 18 (1) If the department finds that a violation of its regulations, or the laws or other state
19 regulations pertaining to the protection of persons and property, exists in any jail
20 which holds state prisoners, the commissioner of the department, or his or her
21 designee, shall order that the violation be corrected immediately. In order to enforce
22 an order made pursuant to this subsection, the commissioner may order the jail to
23 cease housing state prisoners.
- 24 (2) If the department finds a violation of the health and life safety regulations in KRS
25 441.055 pertaining to the protection of persons or property, exists in any jail, the
26 commissioner of the department, or his or her designee, shall order that the
27 violations be corrected immediately. In order to enforce an order made pursuant to

1 this subsection, the commissioner may order the jail closed until the violations are
2 corrected.

3 (3) No jail that was ordered by the Department of Corrections prior to July 15, 1996, to
4 be closed or to operate other than as a full-service facility shall operate as a full-
5 service facility to hold state prisoners unless it is granted a certificate of occupancy
6 by the Department of Corrections. In order to enforce an order made pursuant to
7 subsection (1) of this section, the commissioner may:

8 (a) Order the jail or portions thereof to be vacated and closed until the violation is
9 eliminated.

10 (b) Order the jail to cease to house certain classes of prisoners or limit the length
11 of time prisoners or certain classes of prisoners may be housed in the jail.

12 (c) Order the state contribution made pursuant to KRS 441.206 to be used, in
13 whole or in part, to contract with another county for the incarceration of
14 prisoners.

15 (4) An order issued under this section shall be in writing, incorporating the findings of
16 the department and other agencies, if appropriate, and shall be delivered,
17 electronically mailed, or mailed by certified mail, return receipt requested, to the
18 county jailer and county judge/executive within twenty-four (24) hours of the
19 issuance of the order. The county jailer or county judge/executive may, within
20 seventy-two (72) hours of receipt of the notification, request in writing a public
21 hearing before the commissioner of the department or his or her designee on the
22 matters covered by the order. Upon the hearing, the commissioner of the department
23 or his or her designee may administer oaths and may issue subpoenas for the
24 attendance of witnesses and the production of relevant books and papers. The
25 commissioner of the department or his or her designee may issue, modify, or repeal
26 the order at the conclusion of the hearing.

27 ➔Section 9. KRS 441.105 is amended to read as follows:

1 The jailer shall:

2 (1) Submit a quarterly report to the fiscal court concerning the physical condition of the
3 jail, the number of jail personnel and personnel needs, and other matters requested
4 by the fiscal court.

5 (2) Submit a monthly report to the department in electronic format, on forms supplied
6 by the department, containing, but not limited to, the following information on each
7 prisoner:

8 (a) The unit of government whose law the prisoner is charged with violating, the
9 statute or ordinance the prisoner is charged with violating, and whether the
10 charge is a felony or misdemeanor;

11 (b) The status of the prisoner, whether pending trial or post conviction;

12 (c) The age and sex of the prisoner; and

13 (d) The county responsible for the incarceration of the prisoner.

14 ➔Section 10. KRS 532.200 is repealed and reenacted to read as follows:

15 As used in KRS 532.210 to 532.250, unless the context otherwise requires:

16 (1) "Home" means the temporary or permanent residence of a defendant consisting of
17 the actual living area. If more than one (1) residence or family is located on a single
18 piece of property, "home" does not include the residence of any other person who is
19 not part of the social unit formed by the defendant's immediate family. A hospital,
20 nursing care facility, hospice, half-way house, group home, residential treatment
21 facility, or boarding house may serve as a "home" under this section;

22 (2) "Home incarceration" means the use of a monitoring device approved by the
23 commissioner of the Department of Corrections to facilitate a prisoner's ability to
24 maintain gainful employment or to participate in programs approved as a condition
25 of his or her incarceration, or both, using the person's home for purposes of
26 confinement;

27 (3) "Violent felony offense" means an offense defined in KRS 507.020 (murder),

1 507.030 (manslaughter in the first degree), 508.010 (assault in the first degree),
 2 508.020 (assault in the second degree), 509.040 (kidnapping), 510.040 (rape in the
 3 first degree), 510.070 (sodomy in the first degree), 510.110 (sexual abuse in the first
 4 degree), 511.020 (burglary in the first degree), 513.020 (arson in the first degree),
 5 513.030 (arson in the second degree), 513.040 (arson in the third degree), 515.020
 6 (robbery in the first degree), 515.030 (robbery in the second degree), 520.020
 7 (escape in the first degree), any criminal attempt to commit the offense (KRS
 8 506.010), or conviction as a persistent felony offender (KRS 532.080) when the
 9 offender has a felony conviction for any of the above-listed offenses within the five
 10 (5) year period preceding the date of the latest conviction;

11 (4) "Terminal illness" means a medically recognized disease for which the prognosis is
 12 death within six (6) months to a reasonable degree of medical certainty; and

13 (5) "Approved monitoring device" means an electronic device or apparatus which is
 14 capable of recording, tracking, or transmitting information as to the prisoner's
 15 location or verifying the prisoner's presence or non-presence in the home, or both.
 16 The devices shall be minimally intrusive. Devices shall not be used without the
 17 prisoner's knowledge to record or transmit:

18 (a) Visual images other than the defendant's face;

19 (b) Oral or wire communications or any auditory sound other than the defendant's
 20 voice; or

21 (c) Information as to the prisoner's activities while inside the home.

22 ➔Section 11. KRS 532.260 is amended to read as follows:


23 (1) Any Class C or Class D felon who is serving a sentence in a state-operated prison,
 24 contract facility, or county jail shall, at the discretion of the commissioner, be
 25 eligible to serve the remainder of his or her sentence outside the walls of the
 26 detention facility under terms of home incarceration using an approved monitoring
 27 device as defined in KRS 532.200, if the felon:

- 1 (a) 1. Has not been convicted of, pled guilty to, or entered an Alford plea to a
 2 violent felony as defined by the Department of Corrections classification
 3 system; or
 4 2. Has not been convicted of, pled guilty to, or entered an Alford plea to a
 5 sex crime as defined in KRS 17.500;
- 6 (b) Has one hundred eighty (180)~~ninety (90)~~ days or less to serve on his or her
 7 sentence;
- 8 (c) Has voluntarily participated in a discharge planning process with the
 9 department to address his or her:
- 10 1. Education;
 11 2. Employment, technical, and vocational skills; and
 12 3. Housing, medical, and mental health needs; and
- 13 (d) Has needs that may be adequately met in the community where he or she will
 14 reside upon release.
- 15 (2) A person who is placed under terms of home incarceration pursuant to subsection
 16 (1) of this section shall remain in the custody of the Department of Corrections. Any
 17 unauthorized departure from the terms of home incarceration may be prosecuted as
 18 an escape pursuant to KRS Chapter 520 and shall result in the person being returned
 19 to prison.
- 20 (3) The Department of Corrections shall promulgate administrative regulations to
 21 implement the provisions of this section.
- 22 ➔Section 12. The intent of the General Assembly in repealing and reenacting
 23 KRS 439.320, 439.340, and 532.200 in Sections 4, 5, and 10 of this Act is to affirm the
 24 amendments made to these sections in 2008 Ky. Acts. ch. 158. The specific textual
 25 provisions of Sections 4, 5, and 10 of this Act which reflect amendments made to those
 26 sections by 2008 Ky. Acts. ch. 158 shall be deemed effective as of April 24, 2008, and
 27 those provisions are hereby made expressly retroactive to that date, with the remainder of

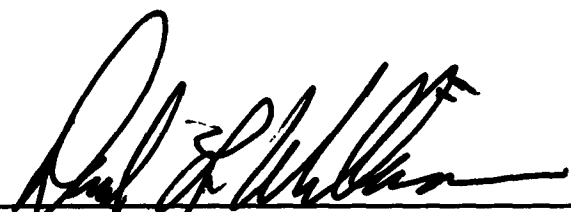
1 the text from those sections being unaffected by the provisions of this section.

2 ➔Section 13. To the extent that any provision included in this Act is considered
3 new language, the provisions of KRS 446.145 requiring such new language to be
4 underlined are notwithstanding.


5 ➔Section 14. Whereas the effective and efficient protection of the public from
6 crime is a fundamental duty of government and a needless delay in the implementation of
7 Section 6 of this Act impedes that protection, an emergency is declared to exist, and
8 Section 6 of this Act takes effect upon its passage and approval by the Governor or upon
9 its otherwise becoming law.



Speaker-House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date April 12, 2010